

COMMISSIONERS PROCEEDINGS

JULY 11, 2006

CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stuart, Morris, and Boldt, Chair, present.

PLEDGE OF ALLEGIANCE

Sarena Fog led the Flag Salute.

PUBLIC COMMENT

Mark Rohr, 4501 Addy Street, Washougal, commented that William Clark Park is an asset to Clark County. He said there have been many events held there, including the 4th of July celebration. Mr. Rohr said there is an issue regarding litigation over the restrooms and he wondered if there was anyway it could be resolved so that the restroom facilities will be available during the summertime while all of the events are taking place.

Pete Capell, Director, Department of Public Works, stated that there are a number of punch list items for the construction contract that have not been resolved and are in dispute between Parks and the contractor. Mr. Capell said they are working on resolve those issues in a timely manner, but appeared to be at a stalemate. He said they may end up going through a legal process.

Stuart asked if there was a contingency plan in place for the summer.

Capell said they can ensure that port-o-potty's are available.

CONSENT AGENDA

There being no public comment, **MOVED** by Stuart to approve items 1 through 14. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 286)

PUBLIC HEARING: ROAD VACATION, HYLEN WAY

To consider the County Engineer's Report on the advisability of vacating Hylen Way, which is a tract of land in a portion of the Kelly Donation Land Claim.

MOVED by Stuart to continue the hearing for Road Vacation of Hylen Way, to August 22, 2006, at 10:00 a.m. in the Commissioners' Hearing Room, Public Service Center, 6th Floor. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 286)

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PUBLIC HEARING: HABITAT CONSERVATION ORDINANCE

Held a public hearing to receive public comments and consider adoption of proposed revisions to the Clark County Habitat Conservation Ordinance (CCC 40.440). The proposed ordinance includes modifications made after the hearing before the Board of Commissioners that occurred on June 20, 2006. The proposed revisions relate to the application of the ordinance to agricultural activities. Public comment will be limited to the revisions made after the Commissioners' hearing that occurred on June 20, 2006.

****Verbatim****

BOLDT: Now, moving onto the Habitat Conservation. Do you need a minute to get your things?

MORRIS: No, I see that it's been re-provided.

BOLDT: Okay. Thank you, Joel. Do you want to start it off?

JOEL RUPLEY: Thank you, Mr. Chair. Joel Rupley, Endangered Species Program Coordinator. We've been managing the update to the Habitat Conservation Ordinance and finally we're getting to the agricultural portion of that. The remainder was passed on June 20. You have a staff report in front of you; however, I also have an addendum, which kind of compares the two versions and basically last time you directed staff to prepare two versions of a set of agricultural regulations that could be applied here in Clark County. The first was developed from your discussions during a work session on June 15. The second was presented earlier than that, but there seemed to be some interest in retaining that. So both version 1 and version 2 of Exhibit A are attached to the paperwork that you have and there's also Exhibit B, which updates the definition section as well. The adopting ordinance has a number of "whereas's" which reflect the concerns of the board as has been expressed over time. The piece in front of you that I gave you just this morning has bullets at the top for similarities between the two versions and then the issues that are different are in the table. So just real quickly, the versions are relatively

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similar. The primary differences are in version 1 there is no default option. In essence the main body of the ordinance becomes a default. In version 2 there is a management plan option, or a habitat protection plan option and a default option. If you pass the default option, you would need to determine what size the riparian areas are in that. There was no agreement among the committee that worked on this and so that's still up in the air. Finally, both versions delay implementation until a date to be determined, which we need to figure out as far out as a couple of years. However, neither specifically provides for protection of functions and values in the interim. They both presume that functions and values as exist on the date of adoption of the ordinance need to be protection, but there is no interim what if's involved there. I'll answer any questions. We can go over these in greater detail if you'd like, but I think you're familiar with them.

BOLDT: I thought maybe we would have Mr. Hill come up and address his paper first. You give us that and maybe with that...you can listen too, Mr. Lowry, and then we'll kind of have...

MORRIS: Mr. Lowry, have you had a chance to see the suggested revisions for Mr. Hill?

RICH LOWRY: Yes, and there's only one that gives me some...well, there's obviously a policy issue that's addressed in terms of exempting existing Ag altogether in resource lands, but the specific code amendments -- there's only one that gives me some concern. The rest I think frankly are improvements to the draft.

MORRIS: Great. Thank you.

BOLDT: That's good to hear.

STEVEN HILL: Good morning. Thank you. My name is Steve Hill with the law firm of Miller Nash here representing this morning the Clark County Farm Bureau. First of all,

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I'd like to thank the commission and staff for involving the Farm Bureau in this process and they feel, I believe, that the process has worked and that their issues and concerns are being heard and being addressed and certainly going to be much more easy for them to comply with what is on the table right now than what had come out from either the work group or what was in the earlier drafts. So what I've done with the email that I sent to Joel and Rich yesterday, with a copy to Commissioner Boldt—and I have extra copies here...I don't know if you...

STUART: I'd like to see it. Yeah, please. Thanks, Steve. Oh, okay, I did get that. I'm looking at it. I'm sorry. I got it forwarded to me.

HILL: This one has it in color so that you can see what proposed revisions for the greatest extent. I don't think there's any of them that have not been addressed and raised before by the Farm Bureau in prior submittals for the record or in testimony we've had before the commission. And you can see generally of the two versions that have been put forth by staff, the Farm Bureau believes version 2 is a better starting point primarily because it provides flexibility in allowing those farmers that don't want to go through this plan option of agreeing to a default option that requires them to set back a certain distance from the resource and allow them then to continue their operations as long as they don't degrade the resource. So that's for those that don't want to go through the plan. We certainly believe for the most part the Farm Bureau members will want to go through the plan option and be able to continue their activities with whatever necessary revisions to protect the resource. And so having those two options, we felt, was a good thing and would support—even though we all don't want to talk about buffers, if someone chooses to set back and that's their choice, then at least they have that option to do that.

Then the other parts of the email here relate to suggested revisions to version 2 and I've tried to with a certain amount of specificity list those for you. I'll just generally go over them. I don't think we need to go over them unless you have questions. In the section that

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you need to select the area in which the management plan would be applicable to, we suggest certainly the smaller of the distances from the resource. I think one option has the larger buffers...or not buffers, but a riparian area designations and then one is a smaller one that came out of some discussions in the work group. So that's Section 40.440.040(B)(2)(a)(1) and that's again version 2 in which there's a choice you have to make, as the commissioners, which of those numbers that are in that version—I think it's for the category for the Type S streams it's 100 or 250 feet, 100 or 200 for (inaudible) so on. We would recommend you select the smaller one. That isn't a buffer. It isn't intended to be, you know, a no-touch. It's merely defining where the plan would have to be implemented in. So we support the smaller.

The other changes to Section 2(a)(3) really are I think just clarifications of what we understood the situation to be that you'd look at the condition of the riparian area from the date of adoption as the baseline for that particular location or farm and the change to F is merely allowing and really requiring that the Ag habitat technician actually come and look at the property, which I think is a good thing; will help make the plans better and help the farming community do the right thing, which I know they want to do. 2(d) on my outline talks about changes to the guidelines and what we wanted to reflect with these changes was that agriculture can have positive effects on habitat and we want to make sure those, number one, are reflected in the plan and then with the second...looks like my numbering got off there...lettering got off. I apologize for that. It's the automatic lettering. But what would be E, merely discusses the fact that you want to enhance the things that add positive benefit to the habitat and then minimize or mitigate for any potential negative effects of the Ag activity. Paragraph F—which would be F—merely says that the Ag habitat technician could either prepare the plan or merely review it and approve it. This gives the farm folks the option of preparing their own plan and then having it reviewed and approved by the certified/licensed/trained technician. This gives us some flexibility in how we do the plan. Letter G—what would be G—is just adding the natural resource conservation service as one of the resources for these Ag habitat

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technicians. They have a number...obviously they do these kinds of plans and programs and should have been added. And then H, under 2, is...I felt that the language was a little bit awkward there and felt that it would help to define that you needed to show evidence of substantial degradation resulting from excessive sediment, nutrients, or chemicals. The way it's written now, it seems like any of those things is already considered degradation and I think you need to test it as to the standard of substantial degradation, which is the standard we use throughout the language of the Ag module. So that's the reason for those. The third bullet, or third paragraph, relates to requests that we made previously to the commission to consider exempting agricultural activities that actually occur on Ag resource lands. And I think there was some concern about some of the case law and I did go back and review the Island County case, as well as the Clallam County case, and I could find no basis in those rulings that would preclude the county from making that exemption for Ag activities on Ag resource lands. And they defined it as a balancing test of looking at the competing interests of protection of critical areas and protection and encouragement of agricultural. And in the Island County case they didn't allow the Island County to do that on all rural lands, so they looked at—and the one they were mostly concerned about—was rural residential property in that county; that they felt they needed to have a substantial justification and they couldn't make that standard at that time, but they didn't look at and they didn't preclude exempting agricultural on Ag resource lands and, in fact, they talked about that balancing of those competing interests within GMA. So at least my reading of it, I feel that the county can do that. It's not, you know certainly the courts may disagree at some point and we may get a Supreme Court decision in the state that might say that that's the case, but at least as to the state of the law as I've read it, I don't think you're precluded by prior case law in exempting Ag activities on Ag resource lands.

So that's basically the Farm Bureau's concerns about version 2. We certainly support the county adopting version 2 with the suggested revisions that we've proposed and are certainly willing to discuss further with you or staff if you choose any other changes.

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MORRIS: Mr. Hill, I had not read either the ordinance from Island County or the case, but my understanding must have been incorrect. I thought that the Island County case used best management practices for Ag land and then had tried to say best management practices was also sufficient for non-agricultural land, and what the court said was you can use BMP's on Ag land, but not on non-Ag lands. Have I been misinformed?

HILL: Well, I think that was certainly part of their plan.

MORRIS: Okay.

HILL: I can't say that I've gone back and detail reviewed Island County's ordinance. I merely reviewed the case and looked for language that I felt would preclude the county here from adopting an exemption for Ag activities on Ag resource lands. I did not see that. Rich may have a different...

LOWRY: I might jump in here. Rich Lowry again. The Island County case did not involve the challenge to the exemption for existing land on resource land. The ordinance did –

MORRIS: So there was an exemption?

LOWRY: It was an exemption, but in order to get the exemption they had to employ best management practices. So you're correct, the ordinance did require use of best management practices, but the challenge that was faced only dealt with applicability of the ordinance on non-resource land. My reading of the Island County case is that when you're dealing with resource land, it's appropriate to balance the goal for environmental protection of critical areas against the goal for promotion of the agricultural industry and make decisions that weigh towards the Ag rather than the critical area ordinance. I would

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agree that...and we simply don't have a case that indicates whether a total blanket exemption is okay on resource land. The Island County rationale certainly says you can go further in terms of not regulating Ag in resource land and at least arguably can have a total outright exemption without a requirement for best management practices.

MORRIS: Okay. Well, you know that I am the strongest advocate there is for exempting Ag on resource lands so I just had been under the impression that best management practices had somehow been involved in the Island County case.

LOWRY: It was, but again it wasn't an issue for the court. The committee was advised that it was an option to consider a total exemption on resource land; however, the committee felt very strongly that everybody ought to be treated the same and so from a policy standpoint rejected a different treatment for resource and non-resource land.

STUART: What committee are you speaking of?

LOWRY: The Ag –

STUART: Our committee.

LOWRY: Your committee.

MORRIS: And let me clarify, Mr. Hill, does the outright exemption on resource lands apply to new Ag. So if ten years from now someone were to come and...but obviously their standard of the current circumstances would be different, wouldn't it? I mean your benchmark for measurement for degradation becomes different?

HILL: Yes, and the way I drafted it, it would exempt Ag activities whether they were existing or not.

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BOLDT: I have a question, Joel. This isn't applied to timber, right? Because they have their own set of regulations?

RUPLEY: Forest practices are covered by the state DNR, and to some degree counties conversion forest practices ordinance, and Type I and perhaps Type II practices that are not regulated by the state may be regulated by our forest practices ordinance to some degree.

BOLDT: But if they're regulated by the state, we're not regulating them?

RUPLEY: Right.

BOLDT: When it gets to a farm plan with a dairy that is regulated by the state already, are we regulating that or are we letting that farm plan stand?

RUPLEY: We have not seen or written the guidelines yet, but I would presume that the Farm Bureau would have substantial influence on proposing...

LOWRY: I think that from the case law the important thing to keep in mind is that when you have ancillary regulations, they may or may not address all functions and values of the critical area ordinance. The problem with best management practices, for example in the Island County case, was that they dealt with some functions but not others and so in constructing local guidelines, if it appears that for example the state dairy regulation covered the area so there's nothing more to be done locally, then the guidelines could simply say that a dairy plan satisfies the ordinance.

BOLDT: Oh, okay.

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MORRIS: We don't have very many of those dairy's left, but I would assume that for the most part they are on lands that are zoned resource land so they would – they're not? Oh, really?

HILL: Well, I guess just to respond to that, if it's a dairy that's subject to the state's dairy farm regulations, they're certainly going to have to comply with that regardless of what the county's ordinance says. And I would agree with Rich that if that compliance with the dairy farm plan met the conditions that we establish in the management plan, assuming that they're on a property that requires a management plan, we would prefer just to have that dairy plan suffice for the management plan, if that's appropriate. We're certainly not suggesting that anything you're going to do is going to effect the farmer's obligations under other state law. I mean, that's their obligation.

BOLDT: And really the only reason I bring it up is that we have talked about even the Supreme Court may throw it out or we could exempt it. I was talking to the department of ecology and even some NRCS people about going to poultry probably this year, going to other animal units such as beef this year, and I think hogs and eventually horses so I think we're going to wind up...everything's going to be under a farm plan eventually under the Department of Ag anyway, you know.

MORRIS: Good. It was time for them to do it. And I'm assuming that as the regulations are written then it's probably worth while for somebody to take a note of this and remember it as we advance that the regulations themselves could be written to say, "agricultural activities regulated through the Department of Agriculture are not subject to further review." I would think –

BOLDT: That'd be fine.

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MORRIS: Or that “those shall be deemed sufficient to...” – that can all be written, I think, into those regulations.

LOWRY: They can be, although again the inquiry that needs to be made is whether those state regulations do address all functions and values that the ordinance requires be protected. If they do, then deferral to the state regulation is altogether appropriate. If they don't, then the guidelines could simply provide that the farm plan has to address only those functions and values that aren't addressed under the state regulations.

BOLDT: I see what you mean.

RUPLEY: Commissioners, could I put a little context in your discussion? With respect to the numbers of lots and amounts of acreage out there—I think we've got a map of the zoned areas up here this time—but at any rate, there are 1,347 lots zoned as resource lands that are taxed as resource lands. There are 1,904 lots that are taxed as farms by the state, but not on resource lands; and there are 2,200 lots—or 15,000 acres—that are actually zoned resource lands, but are not taxed as such. That's the first piece. So there's a disconnect. The other piece is that the definitions in Exhibit B, the changes to the definitions, Animal Husbandry—Bill just pointed out we probably ought to include pigs or swine in there as well; we forgot that—but also that those are written to contemplate that farming activities are not necessarily associated with commercial activities, profit making activities. And if you extend the exemption to all new Ag on resource lands, then you need to take a look at the definition to make sure that...because using this definition, raising horses on a five-acre plot with a stream on it, would not be subject to any controls at all. There would be no regulation of...

MORRIS: On a resource zoned five-acre parcel?

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RUPLEY: Yeah, somebody just running a few head of horses on that would not be subject to any regulation at all whereas just over the zoning line they would be.

MORRIS: My sense of it is that there aren't very many five-acre parcels that are zoned Ag, if you were to look at that map and you were to look at the parcelization in the areas marked for agriculture. Because that was one of the big issues in agri-forest that if it's highly parcelized, you changed it. I have no idea whether I'm accurate or not, but I bet if you were to look at Ag zoned lands you'd find that there aren't a lot of them that are in five-acre parcels.

RUPLEY: Do you want to take a quick look?

MORRIS: Yes, if we can.

STUART: What color is Ag on there? I can see colors. I can't see parcel lines or anything.

RUPLEY: I think the brown is...I'm sorry...agriculture...yeah. And we're also talking about forest as well.

[Discussion about the designated colorings on the map – everyone speaking simultaneously.]

MORRIS: Well, I think over in here you see some parcels that are small.

STUART: And down from there, like just outside the urban reserve, there's that brown right on the west side (inaudible). So west side is where there is some parcelization.

RUPLEY: There's a little in here (inaudible).

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STUART: Yeah, a few little strips.

MORRIS: Well, there may be more than I thought so that's probably a very worthwhile thing to point out, Mr. Rupley.

BOLDT: Are there anymore questions for Mr. Hill?

LOWRY: While he's still up here, it might be appropriate to indicate the one change under part 2 of his email that I have some concern with, and that's the one which deals with enforcement. Specifically, there are really two changes that are being suggested and one is to change evidence of degradation to evidence of substantial degradation. That change is consistent with the ordinance. The ordinance standard for Ag, not for the general ordinance, but for Ag, says that the functions and values under Ag use will be substantially maintained so evidence of substantial degradation is consistent with that standard. However, then it goes on to make the list that's currently in the ordinance, which deals with excess sediment, nutrients or chemicals, and makes that an exclusive list. Whereas now it's examples of kinds of occurrences that could be viewed as resulting in substantial degradation. That change may be a very significant one, for example if you have an existing farm that historically is as maintained a natural vegetation against a stream and they clear out that natural vegetation, they're not maintaining existing conditions, but they wouldn't fall within the examples that are currently in the ordinance. So again the concern simply is changing the phrase "such as" to "resulting from" because that does substantively limit the kind of activities that could be found to be resultant in substantial degradation. Other than that, again the remainder of the proposed changes are consistent with the ordinance and in most cases, I think, constitutes an improvement.

STUART: What's the list of the...after "such as" or "resulting from"? I don't have that.

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LOWRY: That's on page –

STUART: Can you just read it to me?

LOWRY: Sure.

STUART: Thank you.

LOWRY: It currently reads “such as...” and again the change would be, “resulting from excess sediments, nutrients, or chemicals moving from the outer zone into the stream,” and then it goes on to say, “constitute grounds for enforcement.”

STUART: So it just gives a few examples, but doesn't really have a...

LOWRY: Yeah, it was intended to be examples. This would change it to an (inaudible) list.

STUART: An exhaustive list.

LOWRY: Right.

HILL: I'll just explain my reason for suggesting the revision, and I don't disagree with Rich that maybe some additional (inaudible). My concern was that excess, sediment, nutrients and chemicals may or may not cause substantial degradation and I didn't want that...if you found that, that immediately you assumed that was evidence of substantial degradation. I merely tried to say that if those things happened and it results in substantial degradation that certainly is appropriate for enforcement. So I didn't mean it to be an exclusive list, I just meant that I didn't want it to be assumed to be evidence of substantial degradation. It needs to be tested as to what truly is substantial degradation.

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STUART: And that's my concern is that, I mean, I need a measurement for what is substantial degradation just like we need to know "substantially maintained." What does that mean? You know, every kid that has ever gone to law school knows that substantially is a very nebulous term that can be defined a million different ways. So we need to have definitions attached to these somehow that identifies what substantial degradation...that's my concern with substantial degradation is if you say degradation, I can say here's my point A and where at the point of adoption, this is what it was. If it's at all less...you know, of a lower quality than that, it's degraded and we're trying to maintain a no net loss of the function of the resource so if it's degraded that gives us cause for alarm; cause to get involved. With substantial degradation, I don't know what it means yet. I guess that's what I'm trying to...

MORRIS: Mr. Stuart, if you'll notice though that the entire sentence reads...the word substantially degrade –

STUART: What page is that, Commissioner Morris? I'm sorry.

MORRIS: It's on page 4, and I'm looking at line 17. The substantially degrade standard has already been set even in that sentence. And I'll concede to you that substantial is a very difficult word to work with because if you say "substantially maintained" what you mean is keep it just the way it is, but if you say "substantially degrade," you mean change the condition of it quite a bit and make it worse. So substantially means either status quo or it can mean a significant change, depending on the way it's used in a sentence, but I guess the part that I like about what you're suggesting, Mr. Hill, is the "from" because what that does is make a cause and effect link and so if someone were to have to prove up that there was degradation, they would have to show the connection. Aside from the word substantial, just because we like to wordsmith stuff I'm wondering if we might be able to

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solve at least this part of the problem by saying “degradation resulting from activities such as...”

BOLDT: Uh-huh.

MORRIS: It still makes the cause and effect connection, but it doesn’t make a definitive list. Would that work, Mr. Lowry?

LOWRY: Could you give me that language again?

MORRIS: On Mr. Hill’s amendments, after the word “from” insert the words “activities such as.”

LOWRY: Yes, that works.

MORRIS: Okay.

STUART: That’s fine by me and I’m perfectly okay with the cause and effect portion of it and pointing to that I think is a great idea, to actually have to prove up some sort of causal relationship because just because there was a flood and there’s sedimentation in the river and, you know, it was a flood that actually caused the sedimentation and the sedimentation will go away at some point, that wasn’t caused by the landowner and so I wouldn’t want that to be included in it. You said “substantially maintained” means status quo. I could argue to you that “substantially maintained” means that I have to sort of maintain it, but there’s a lot of wiggle room, because if you meant “maintain it” you would have just said “maintain”. You wouldn’t have said “substantially maintain”. So I do –

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MORRIS: Well, you can, but I was just arguing your point for you; that substantial is a squishy word.

STUART: Exactly. And I like the language you use. I still would like, in the implementation of this, to be developing 'what does this mean?' so that we don't get caught in litigation about a word.

LOWRY: Two comments: First, you're absolutely correct. The use of the word substantial in a regulatory ordinance is not recommended; however, that's inherent in the basic standard currently in the ordinance. Basic standard that applies to other than Ag is substantially maintained. The standard for Ag, which is found on page 2 of the draft, is not substantially degrade. Now it takes somebody awfully clever to figure out what the difference between substantially maintained and substantially degrade is, but probably that substantially degrade is a slightly weaker standard. There is some argument to be made—and has been made—by Fish and Wildlife that the standard ought to be no net loss, which would be a no degradation standard. So my only point that I'm making here is that the issue of the squishy word is one that's inherent currently in the ordinance and is not being added anew by this language.

STUART: Well, it's currently in the Ag module, but the Ag module didn't exist before, did it?

LOWRY: No, but the overall ordinance that applies to all other activities has "substantially maintained" as –

STUART: The rest of the habitat ordinance.

LOWRY: Yeah. So it's still there. The second comment I'd make is that while we've discussed what substantially maintained or not substantially degrade means, generally the

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discussion has been that it's got to be measurable. You've got to be able in some way to objectively say there has been a change that can be measured. If you can't reach that standard, then it's one that ought not to even be considered.

BOLDT: I think the nice thing about the nutrient state bills is that it's very easily measured. You take whatever it is, water entering the farm, leaving the farm. If there's more nutrients or more sediment, that's it you know. The proof is on the state. I would think the proof would be on the county then, right?

STUART: I would assume so, yeah.

BOLDT: Okay, thank you. Signed up is Bill Zimmerman. Oh, okay. Jim Malinowski.

JIM MALINOWSKI: Thank you. Jim Malinowski, Amboy. I'm very impressed with the amount of work you've done on this. You've really made an extraordinary effort to make that difficult balance between property rights and habitat protection. I'm very happy with the addition of the accessory buildings provision because that was something that we had missed when we set up the original ordinance. And the other thing is the limit on the percent of property affected. I think that that's in line of the idea of reasonable use and I think if this property rights initiative passes, I think it's going to be a major benefit to the county to make the argument that you haven't taken away a lot of use. And so I think that's a great benefit. I wish—I gather we're only talking about agriculture here, but I really wish you would have eliminated the hazard tree provisions. I think it's a silly provision and I think we ought to avoid silly provisions in regulations, but maybe you can deal with that somewhere. One of the things I'd like to ask for is that I'd really would like to ask the commission to press the staff to use soft versus hardnosed implementation. What we really want out of this is to convince landowners to be good stewards of the land, to enhance habitat. I worry a little bit that we're focusing (inaudible) no degradation. Fish First's objective is to enhance habitat and so I would like to see the staff focus on

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working with landowners like Fish First does and persuade them to enhance the habitat and look for those win-win situations. I do think that you need an inexpensive appeals process so that a citizen who thinks the staff is abusing them has a way to come and get somebody to listen to them without paying the high fees that are associated with the formal appeals process. And finally I'd you to have some kind of annual review of how this is being implemented. The original task force was promised that we were going to have a review after a year of implementation. There has never been a review of the implementation of the existing ordinance. I think it's important that you know how well it's being implemented and how the objectives are being achieved, and is the staff treating the public the way you expect them to treat them. Again, thank you very much for all the hard work you've done on this. It's not an easy job.

BOLDT: Thank you very much.

STUART: Thanks, Jim.

MORRIS: Thank you.

BOLDT: I have a couple of questions. I'm assuming that the appeals process could be written into the implementation guidelines, or do they have to be in code?

LOWRY: The draft currently provides...well, I guess, number one, for the plan option that's not a staff decision. That's delegated to the Ag Habitat Technician. The draft ordinance does provide that if a property owner is not happy with the decision of the technician, that they can get a staff determination without any fee. From then on, at that point then it's a Type I land use decision and can be appealed as a Type I land use decision, but it would be subject to the existing fee schedule. The ordinance itself contemplates that the vast number of decisions that are made under the ordinance would be made by these technicians in consultation with the ordinance, and one of the good

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things in Steve Hill's comments is that he has put in language that says the beneficial effects of a farm plan should be taken into account also and that, I think, is the win-win; the kind of thing Mr. Malinowski is looking for.

BOLDT: Okay.

MORRIS: So at what point would there be an appealable action? Because as far as I can tell these are certified. There's no staff involved, there's not a county decision.

LOWRY: Correct. And that is intentional in part because we don't want these plans to be able to become the subject of a neighborhood dispute so that a neighbor appeals a technician's decision. The current draft...the technician's decision is a Type 0, it's not appealable. If the property owner and the technician are in agreement, then that's the end of it. The county doesn't...the prior board direction doesn't even get a copy of the plan. There is notice that is filed with the Auditor saying that there is a plan, but the county is out of the loop essentially other than that.

STUART: How do we enforce then?

LOWRY: Substantial degradation is the test.

STUART: Okay, which I like actually because then the test is not, are you following the minutiae of the plan?

LOWRY: That's right.

STUART: The question is how's the resource doing?

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LOWRY: That's right. That was something that was advocated by the Farm Bureau and resisted by me slightly.

BOLDT: Okay, so with that do you...

MORRIS: I would just note that I think we have a couple of other issues here then to be discussed during the guideline construction. So far we haven't had a discussion about what happens if the technician and the farmer don't agree. And if there is no appealable action, what happens?

LOWRY: What the draft ordinance says in that situation is that the property owner then can go to the 3rd Floor and get a staff determination on their plan.

MORRIS: So that then would be appeal, the staff determination. So it's in everybody's best interest for the landowner and the technician to come to agreement.

LOWRY: Absolutely. There's nothing in the ordinance that precludes technician shopping.

MORRIS: Technician what?

STUART: Shopping.

[Laughing]

BOLDT: So for now we need, I believe, as you said Joel, to define the areas and also the date of implementation, right? If we're going with version 2, even with the Farm Bureau's recommendation. What?

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BILL BARRON: Version 2 as amended by the Farm Bureau's language...amendatory language.

BOLDT: Right.

STUART: The amendatory language by the Farm Bureau I'm pretty much okay with. My one remaining concern with version 2 is I'm happy to go with the smaller default then having the default be the whole ordinance. For Ag, I'm still concerned a little bit about going back to—and would still like to go back to—the committee's recommendation of fairness between Ag and non-Ag land, and then it becomes more about the use. I would actually...I'm with Commissioner Morris, I would be willing to just exempt all Ag use, you know, all farming use. The problem is, it doesn't work, you know we get smacked around for doing that, but when they tell us that we can go ahead and exempt Ag zoned land, but not non-Ag zoned land, I mean our own stats our telling us that 1,904 lots are taxed...get current use exemptions for Ag, but they're on non-Ag land and only 1,347 lots are taxed in current use and are Ag. In our growth plan we're going to be talking about some of these Ag designations not being correct and that honestly we need to take another look at that and that...and I know, Commissioner Morris, you're doing a lot of work on figuring out what is agriculture in this county, which I think is great. I'm concerned that the distinction between Ag land and non-Ag land in our county doesn't exist. That we have not—and I say "we" in the grand sense of commissions down the years—have not accurately been able to identify what works for farm land and what doesn't work for farm land and what farmer's need and all of that aspect of it. So for me, if I can't exempt everybody who's doing farming, then to be fair I say well, then everybody should be doing those farm plans. And to just exempt outright the people on Ag land from even those requirements, from even the limited requirements of filing a farm plan and of having a minimum default, if they don't, to me it's not only that it's not fair, it doesn't make sense based on what we see on the ground.

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So I'm still concerned about that and that's kind of the only aspect of it that I'm still kind of hung up on.

BOLDT: Of exempting...

STUART: Ag land outright instead of just having them be subject to the farm plan requirement that other farmers are going to have to do. Because we have a lot of farmers on non-Ag land who are going to be doing these farm plans and just because their land didn't happen to get zoned for Ag, then they're going to have to go through doing the farm plans and someone who has Ag land, but that has a horse on it, is going to be exempt.

MORRIS: I couldn't agree with you more that there's substantial, meaning great big, huge, certainly not de minimis in equities when it comes to an activity, but our code is filled with different requirements and restrictions depending on the type of activity or the type of building that's going on a parcel of property. We have different setbacks, we have different landscape requirements, we have different frontage road improvements. It isn't unprecedented at all. And, again, the major difference...well, first of all, the number of lots is impressive. The number of acres is probably a more accurate reflection because you're going to have smaller parcels in the non-agriculturally zoned areas and so you're going to get more parcels. The acreage, I think, is a little more even than the parcel numbers reflect, but it doesn't matter. The whole bottom line is that our agricultural zoning probably wasn't very well done the very first time around. But the fact is that those people who are locked into a zone are expected, they are anticipated, they are required almost, to make that kind of use of their property. Those people who are not zoned Ag are not expected to be. We set out a set of expectations when we do land use planning and then we put colors on the map to demonstrate our expectations for different pieces of land. We expect that part that is zoned for residential to develop residential. We expect it to be used primarily for residential. The fact that it's ancillary use is agriculture,

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it's still an ancillary use. It's more a home occupation than it is anything else. On the larger parcels though we expect the primary use of the agriculturally zoned lands to be for Ag. It's called commercially. It's supposed to be commercially where you raise crops for the purpose of commercial activity. So the very fiber of zoning law, the very fiber of our development codes has different expectations for different kinds of behavior depending on the zoning. So I don't think that it's that far a field to treat land, which we expect to be used as agriculture, in a different fashion than the land we expect to be used as either residential or as commercial or industrial.

BOLDT: I guess I would kind of agree with though...are we talking about exempting Ag on resource land?

STUART: That's what alternative 2 would be.

BOLDT: I agree with everything, except I think we should treat resource Ag regardless of what it is. If it's on resource land, they should have a farm plan. And the reason I'm saying that is that this ordinance is extremely soft and the reason we have a habitat ordinance is to protect habitat in our county. That's why we have it. We don't know if salmon's going to get there, but if they're going to get there we're going to have a place for them to live. This is the least amount of responsibility on the farmer that I see. We expect a person farming in Ag to have safe food, to pay minimum wage, to abide by the Department of Ecology—everything else is kind of we already have rules to them farmers. Farming as long as I did, I was under all them rules in which this wasn't even...this would have been the nicest one. And so, you know, when you say we zone land and expect farmers to make money on their...expect them to do activities on there, but we're already requiring them...for more requirements, you know, safe food and everything else. So I think it's our place in this county to say we need good habitat and that is why I like when you said to concentrate on the activity rather than the land. Well then...

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MORRIS: Oh, please, I didn't say that. If I said that, I didn't mean to. What I meant is that it makes a whole lot of difference what the zoning is in terms of what we expect for activities and the standards we set for behaviors.

BOLDT: Right, yeah, I can see that. So I guess I'm for farm plans all the way around or the default mechanism all the way around and for Mr. Hill's recommendations.

MORRIS: Except for the exemption.

BOLDT: Except for the exemption. If the Supreme Court wants to do a full face come around, maybe we could look at that another time, you know.

STUART: I really do believe that it's about protecting the use. Not the zone. And you're and Commissioner Morris' work will help educate us greatly on how to protect the use in this county and I think that we'll have more information, we'll see what the Supreme Court does. Who knows? Is it for sure going to the Supreme Court? Have they scheduled it?

LOWRY: They've accepted reviews. I don't know whether a briefing schedule or argument date has been set yet, but there definitely will be a Supreme Court decision.

MORRIS: Do you mind if procedurally we take this in pieces then?

BOLDT: That would be fine.

MORRIS: I want to offer an amendment to support the exemption on resource lands. I want to be on record for that and I want to be able to vote for the ordinance, but this one just is too close and I need to at least be able to offer that.

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RUPLEY: Commissioners, we also need a date of –

BOLDT: Implementation?

RUPLEY: Implementation.

MORRIS: How long will it take you?

STUART: Yeah, that's the question.

MORRIS: The shorter the better I would think.

LOWRY: The implementation date, which is really a delayed effective date, is necessary because you don't have a full regulation yet. We need the guidelines and in addition to that, we need to get technicians identified and trained. The ordinance also calls out for an outreach program. I'm trying to recall what our recommendation is in terms of...

RUPLEY: If we just do the guidelines and the outreach and write the plans, I would suggest that we may be talking about a year to a year and a half. If we also include time for the plans to work and make sure that they're up and running, that might add another season, that is, another summer...spring, summer, fall. So we might be talking about two years. Two years is a long time. I think we have suggested that the habitat as it exists...the functions and values as they exist at the time of adoption of the ordinance—If you adopt today, that would be the date—are those that need to be protected within the scope of either the default option or the habitat protection plan, but determining what they were might be problematic. So the longer you go out, the harder it's going to be. A good compromise might be, for example, a year and just make sure that staff and all those involved in writing the guidelines get on it and do it.

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BOLDT: If we had the implementation of a year and a review, a year and six months or something like that.

LOWRY: Well, the board will be having another set of hearings because under this draft the board itself is the one that adopts the guidelines so you may not want to go to a review until a year after the ordinance becomes effective.

BOLDT: Okay.

RUPLEY: Also, the adopting ordinance says that we will develop work plans for board approval. Your telling me that I have to go out and write a work plan for board approval, which would give you the times. What we need is an implementation date or a delayed effective date and I'll put wheels on that and come back to you for your approval.

BOLDT: So a year from now implementation. What do you think?

MORRIS: I think that we ought to do at that time because otherwise we look like we're just fooling around.

BOLDT: That's enough time. You have enough people to really put their work into it.

RUPLEY: We're not going to get a whole lot of agricultural interests participating. Bill Zimmerman left to go back to work on his farm right now. I'm thinking that you might want to slide this out until after harvest next year. That would give the farmers time during the winter to work on the guidelines with us.

MORRIS: Don't they want to get it done before harvest?

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STUART: Use the winter to have the farmers be able to give their guidance as much as possible and then we can take it back in-house when they're having to do...after planting gets going...

RUPLEY: Right, but they're not going to be able to implement the plans probably until they get their current crop out of the ground and start on the new plan. Doesn't that make sense?

STUART: All we're saying is that the ordinance would take effect a year from now. It wouldn't be that they had to get their plans done, but that would be in the implementing guidelines that we would be adopting whenever you get them.

BOLDT: And for the most part if they are stewards of the land, they're already implementing a plan and they don't even know it.

STUART: True enough.

BOLDT: So nothing will change.

MORRIS: One other comment. Mr. Lowry, could we add another recital that again talks about balancing the goals of preserving agriculture and preserving habitat?

LOWRY: There is a current recital, if you go to page 3 of the adopting ordinance, starting on line 60.

BOLDT: Did you say 60?

STUART: Right, in the implementing.

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MORRIS: I just would like to have that repeated in the introduction.

LOWRY: In the version to be codified?

MORRIS: Well, it's probably not right just exactly the way...maybe what actually the issue is in the first sentence of the Purpose statement, it would be – “The provisions of this chapter dealing with agricultural activities are designed to harmonize the conflicting goals of GMA to project both agriculture and habitat and, therefore, recognize...”.

BOLDT: Is that good?

STUART: Yeah.

MORRIS: Did you get it all?

LOWRY: What I have under Purpose of Exhibit A, A-4, the lead-in sentence would be changed to read – “The provisions of this chapter dealing with existing agricultural activities are designed to balance the conflicting goals of the Growth Management Act and recognize...”

MORRIS: After Growth Management Act would come the words “to preserve both agriculture and habitat and are designed to recognize...”. I just want to keep pounding that point.

LOWRY: Right. Putting it into the codified version makes a lot of sense.

MORRIS: Great. Thank you.

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BOLDT: So we're agreed on a year, I think, implementation. We are agreeing on the Farm Bureau's changes...

LOWRY: Other than the modification to item second 2-E of Mr. Hill's memo the board gave us language to deal with that.

STUART: Oh, evidence of substantial degradation resulting from activities such as?

LOWRY: Right.

BOLDT: Yes.

LOWRY: And I think the only other issue, in addition to the question on the exemption, is the default areas, the smaller or the larger.

BOLDT: I'm for the smaller.

STUART: When you say the smaller or the larger do you mean the...

LOWRY: On page 2 of version 2, A-1...excuse me, it's not the default, it's the regulated area for the plan. There was not a consensus among the committee so the draft contains two sets of numbers for each of the stream types.

STUART: I'm sorry. I'm not looking at the right page here.

BARRON: Version 2, page 2 of 4, 2-A-1, Regulated Area.

STUART: Thank you.

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BOLDT: The Farm Bureau said the smaller version in their remarks.

RUPLEY: In their remarks. Basically the difference is the default area combined inner and outer zones is a 100 feet, in version 2. The protection plan area, it was undetermined as to whether it would match the size of the riparian areas in the main body of the ordinance, that is 250, 200, 100, or 75, depending on stream; or whether it would match the size of the riparian area in the default option, which is 100 on all streams except seasonal, which is 75.

BOLDT: Okay.

BARRON: Mr. Chairman, would you clarify the effective date again? Is it July 11 or?

STUART: Yeah, July 11, 2007.

BOLDT: One year.

MORRIS: That's implementation, but the effective date...

RUPLEY: (inaudible)

BOLDT: So now except for the exemption of the outright Ag, are we pretty well in consensus? Alright. Could I have a motion, some sort, and then we will let you amend that motion. Right?

MORRIS: That works.

BOLDT: Does that work?

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MORRIS: Yes.

STUART: Thank you, Mr. Chair. I move approval of Exhibit A, version 2, as amended by the Farm Bureau, with the exception of CCC 40.440.040(B)(2)(b)(2), where language was changed by the Board of Commissioners, and also excepting any of the exemption language in the Farm Bureau's request, and with an implementation date of July 11, 2007.

LOWRY: The two other things I think you need to include in the motion are Exhibit B and the language Commissioner Morris suggested for the Purpose.

STUART: Okay, so in addition to the amendments and to the Purpose Statement by Commissioner Morris and Exhibit B, also including land zoned agricultural, as...

LOWRY: Exhibit A, version 2, does not...

MORRIS: I think the simplest way would be to offer a motion adopting Exhibit A, version 2, and Exhibit B, with the suggested amendments from the Farm Bureau, except for the Farm Bureau provisions exemption for resource zoned lands, and with changes in the introduction as modified by the Board of Commissioners, and language from the—Mr. Lowry, you're going to fix this for us, aren't you?—and language suggested by the Farm Bureau on page 4, line 17, as amended by the board.

BOLDT: Very good.

STUART: So moved.

BOLDT: Second?

MORRIS: Second.

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BOLDT: Okay, do we have an amendment?

MORRIS: Yes, Mr. Chair. I would like to move adoption of the Farm Bureau's suggested language exempting agricultural uses on lands zoned agriculture, forest, or Ag and wildlife, and all other amendatory language as suggested by the Farm Bureau.

BOLDT: Any comments? No comments? I think we've made enough of them. All in favor say aye.

MORRIS: I think unless it gets a second, it dies from lack of a second.

BOLDT: I'll second it. You'll get your vote. All in favor say aye.

MORRIS: Aye.

BOLDT: All opposed?

STUART: Nay.

BOLDT: Nay.

STUART: That was just cruel (laughs).

MORRIS: You just wanted to turn the knife didn't you?

[Laughing]

BOLDT: Okay. Is there any comments?

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BARRON: Congratulations.

STUART: Thank you for all your work. Thanks to the committee members.

MORRIS: Wait a minute. Did we do the final adoption.

STUART: No.

BOLDT: No, we haven't. Any comments?

MORRIS: Well, I do want to thank staff for their long and arduous labors on this and the task force who spent enumerable hours wrestling with these really sticky issues. What we require of people on their land always strikes home to the heart and the viscera and they're the most troublesome, but this is a good resolution I think, even though I lost the exemption for agriculturally zoned lands. I think that our infringement on people's right to farm is minimal and I think that I'm really pleased with the approach with the technicians and the fact that these are not county actions. And I would also note that as we advance with the guidelines, we are almost forming—not Washington Administrative Code, but the very first chapter of the Clark County Administrative Code. So we have a lot of adventures ahead of us on this and I want to thank my fellow commissioners. You've been great to work with on this. You've brought a lot of perspective and you, Commissioner Boldt, a tremendous amount of experience because you have done this for a living and I think you know better than any of the rest of us who speak only theoretically. So thank you both.

STUART: Thank you.

BOLDT: Thank you.

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LOWRY: It just occurred to me that there is one other very minor change that's necessary and that's in the table that's in the existing ordinance. When the board adopted the changes to the habitat ordinance other than Ag, we left in or put in a continuation of the exemption for existing Ag. That simply needs to be changed to reflect what the board did and unless the board wants to do otherwise, we'll assume your direction is to make that change to the table and I would suggest that this matter be continued to next week's consent so we can make all the changes and get it to you later this week and have it ready for final adoption on consent.

BOLDT: And as soon as that happens, will you give Mr. Hill that copy and make sure you know...the final.

STUART: So would you like a motion to table until next week or would you like to go ahead and take the vote and then we'll do final adoption next week?

BOLDT: Yes.

STUART: Would you entertain a motion to amend as suggested by Mr. Lowry?

MORRIS: Yes, but I'm wondering if that's proper mechanism. Shouldn't we instead finish this and then do an emergency ordinance, which alters the underlying code?

LOWRY: No. I think the change to the table is within the scope of the notice for this hearing. I don't think we need to do an emergency ordinance.

MORRIS: Okay.

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LOWRY: I think you can just act on the motion, assuming it includes (inaudible) and then we'll just present the ordinance on consent and the board's final action on any ordinances is obviously when you actually sign it, and you're free to make changes up until when you sign it.

BOLDT: Okay. Ready? All in favor say aye.

MORRIS: Aye.

STUART: Aye.

BOLDT: Aye. All opposed? Motion carried. Thank you. Thank you, Mr. Hill. Meeting adjourned. (See Tape 286)

****End of verbatim transcript****

COMMISSIONER COMMUNICATIONS

There were no comments.

2:00 P.M. PUBLIC BID OPENING

Present at bid opening: Louise Richards, Board of County Commissioners Office; Mike Westerman and Allyson Anderson, General Services-Purchasing Department

BID OPENING 2448

Held a public hearing for Bid Opening 2448 – Annual Polymer for Waste Water Treatment Plant. Mike Westerman, General Services, opened and read bids and stated that it was the Purchasing Department's intention to award Bid 2448 on July 18, 2006 at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 287)

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BOARD OF COUNTY COMMISSIONERS




Marc Boldt, Chair



Steve Stuart, Commissioner

Betty Sue Morris, Commissioner

ATTEST:



Clerk of the Board

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